IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9224 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHWANI HEMANTKUMAR SHAH

Versus

REGIONAL PASSPORT OFFICER

Appearance:

1. Special Civil Application No. 9224 of 2002

MR RC JANI for Petitioner No. 1

MR N.J.SHAH for MR DN PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/10/2002

ORAL JUDGEMENT

Rule. Mr. N.J.Shah, learned advocate appears and waives service of notice of rule on behalf of the respondent Passport Authority.

2. By means of filing this petition under Article

227 of the Constitution petitioner seeks to challenge the action of the Respondent Passport Authority not to correct the name of the petitioner in his passport from Shah Dhwani Hemantkumar to Vyas Dhwani Vinayakchandra, as the petitioner has been adopted by Vyas Vinayakchandra Pinakishanker, father of the petitioner and Vyas Rajeshwari Vinayakchandra, mother of the petitioner, and therefore, prayed to issue direction, directing the Respondent Passport Authority to correct the name of the petitioner from Vyas Dhwani Hemantkumar to Vyas Dhwani Vinayakchandra and name of mother is also required to be changed from Kalpanaben Hemantkumar Shah to Vyas Rajeshwari Vinayakchandra in view of the fact that the adoption is made by Vyas Vinayakchandra Pinakishanker, father of the petitioner and Vyas Rajeshwari Vinayakchandra, mother of the petitioner, and to issue new passport accordingly.

3. Mr. R.C.Jani, learned advocate for the petitioner submits that according to the passport rules and regulations, if any correction is made in the passport, petitioner was directed to file a petition for the purpose of getting direction to correct the name of the petitioner as he desire to in accordance with the affidavit-cum-declaration and adoption deed. He further states that the petitioner is having passport since November 1997 and the passport is going to expire on November 3, 2007, and therefore, according to the adoption deed, petitioner is required to give new passport with the change of the name of the father.

4. Mr. N.J.Shah, learned advocate for the respondent Passport Authority states that the respondent Passport Authority functions under the Ministry of External Affairs and as per the instructions of Ministry of External Affairs, the respondent Passport Authority has asked the petitioner to obtain the Court's order. However, no document was placed before this Court to this effect.

5. Mr. R.C.Jani, learned advocate for the petitioner has drawn the attention of this Court to the Hindu Adoption & Maintenance Act, 1956, and more particularly Section 10 which reads as under:

> 10. Persons who may be adopted- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:
>
> i) He or She is a Hindu;

ii) He or She has not already been adopted;

iii) He or She has not been married, unless there is custom or usage applicable to the parties which permits persons who are married being taken in adoption;

iv) He or She has not completed the age of 15 years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption.

6. Sub Section (iv) of Section 10 contemplates exemption to the age bar for adoption. Mr. R.C.Jani, learned advocate for the petitioner has produced a certificate as draft amendment entitling the petitioner from exemption under Section 10 (iv). He further states that the petitioner shall produce the certificate issued from the Pramukh of the Samaj suggesting that in the petitioner's samaj adoption of a person of more than 15 years of age is permissible, along with the application for passport and also undertakes to complete rest of the formalities in this regard.

7. In view of the aforesaid state of affairs, I am of the opinion that the respondent Passport Authority should not have refused the issuance of passport to the petitioner, and therefore, petition deserves to be allowed. The respondent Passport Authority is directed to issue passport to the petitioner in accordance with law, within six weeks from the date of receipt of this order, provided other formalities, as required in this regard is completed.

8. In view of the aforesaid observations and directions, petition stands disposed of. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*